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UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION

Notice of Proposed Rulemaking Regarding Deepwater Ports	)	Docket No. USCG-1998-3884 - 12

COMMENTS OF SHELL U.S. GAS & POWER LLC ON NOTICE OF PROPOSED RULEMAKING REGARDING DEEPWATER PORTS

Pursuant to the Notice of Proposed Rulemaking issued herein on May 30, 2002 (67 Fed. Reg. 37920, May 30, 2002) and the subsequent notice issued on August 19, 2002 (67 Fed. Reg. 53764, August 19, 2002) which extended the comment period to September 18, 2002, Shell U.S. Gas & Power LLC hereby comments as follows upon the rules being proposed by the Department of Transportation and the Coast Guard ("DOT") with respect to deepwater ports:

I.

All correspondence, communications, pleadings and other documents relating to this proceeding should be served upon the following persons:

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II.

Shell U.S. Gas & Power LLC ("G&P") is a limited liability company formed under the laws of the State of Delaware, with its principal place of business located in Houston, Texas. G&P is a wholly owned indirect subsidiary of Shell Oil Company and is

affiliated with the Royal Dutch/Shell Group of Companies. Affiliates of G&P are involved, among other things, in the importation of liquefied natural gas ("LNG") to the United States, and, in that context, G&P is interested in the possibility of offshore U.S. LNG terminals.

As DOT is aware, legislation has been proposed by the Administration and passed by both houses of Congress (S. 1214 and H.R. 3983) which would make certain offshore LNG facilities subject to DOT's jurisdiction under the Deepwater Ports Act, 33 U.S.C. § 1501, et seq. The legislation is currently before a House/Senate conference committee and is expected to be finalized before the end of the year. G&P's interest in this proposed rulemaking stems primarily from its interest in offshore LNG facilities, and from the possibility that some of the proposed rules could ultimately be applied to deepwater natural gas ports as well as deepwater oil ports.

III. Comments

A. DOT Should Clarify That None of the Proposed Rules Will Be Applied To Deepwater Natural Gas Ports Without Further Notice and Opportunity For Comment.

If the above-referenced pending legislation is ultimately enacted, bringing offshore LNG facilities within the purview of the Deepwater Ports Act, DOT will be required, among other things, to promulgate regulations concerning such facilities. It is not clear at this point whether any of the rules being proposed in this proceeding could reasonably be applied directly to offshore LNG ports. Nevertheless, it would be useful for DOT to clarify that none of DOT's existing or proposed rules with respect to oil ports will automatically be applied to gas ports, without interested parties having first been provided with notice and an opportunity for comment. The notice and comment process

will protect the rights of interested parties and will ensure that any rules ultimately adopted for gas facilities will properly take account of the unique characteristics of such facilities.

B. DOT Should De-Couple The Proposed Rules for Deepwater Ports From The Pending OCS Activities Rulemaking.

1. Many of the proposed deepwater port rules refer to and adopt rules being proposed in another pending DOT Notice of Proposed Rulemaking entitled "Outer Continental Shelf Activities" (64 Fed. Reg. 68416, December 7, 1999). The OCS Activities rule applies to fixed OCS facilities other than deepwater ports, and DOT's intention is to align the deepwater regulations and the OCS regulations to the extent practicable. (See, 67 Fed. Reg. at 37920).

G&P has no general objection to alignment of the regulations. The OCS activities proposal, however, has been pending for several years and it is still unresolved. Detailed comments have been filed regarding that proposal and the need and justification for many of the proposed rules have been challenged. Thus, substantive changes in the proposed OCS activities rules are certainly very possible, if not likely, and the required changes may be extensive. If such changes are made, it is not clear what their impact will be on the proposed deepwater rules. Presumably, a new notice and opportunity for comment will be necessary in the deepwater proceeding to reflect any changes ultimately made in the OCS activities docket.

Given the uncertainties surrounding the timing and substance of the proposed OCS activities rules, G&P questions whether those rules should be directly linked to the proposed deepwater port rules at this time. Instead, G&P believes that the deepwater rules should be tied to the current OCS regulations in 33 C.F.R. chapter I, subchapter

N. When and if new OCS activities rules are actually adopted, the deepwater rules can be amended as necessary and appropriate to conform the two sets of rules.

2. If, despite the foregoing, DOT decides to continue to link the proposed deepwater port rules to the proposed OCS activities rules, G&P urges DOT to clarify how changes in the OCS activities rules will be accommodated in the deepwater proceeding. In that regard, procedures should be established to ensure that changed OCS activities rules will not automatically be applied to deepwater ports without additional notice and opportunity for comment by interested parties. In addition, if the two sets of proposed rules are to remain linked, G&P hereby adopts and incorporates by reference in this proceeding, the comments submitted in the OCS activities docket on November 21, 2000, by Shell Exploration and Production Company, which, in turn, adopted the substantive comments submitted in that proceeding on September 4, 2000 by the Offshore Operators Committee.

C. The Proposed Rules Concerning Affiliates of License Applicants Should Be Modified To Conform More Closely With the Deepwater Ports Act Itself.

Several of the rules being proposed with respect to license applications -- specifically, Subpart B, Sections 148.105 (a)(1), (2), (3), (4), (5) and (6), and Section 148.105 (g) -- relate or apply to "affiliates" of applicants. In many respects, the information proposed for submission regarding affiliates substantially exceeds that which is specifically referenced in the Deepwater Ports Act itself. For instance, Section 148.105(g) of the proposed rules requires the submission of certified financial statements for a three year period by both the applicant itself and by "each affiliate." The Deepwater Ports Act, however, makes no mention of affiliate financial information (See, 33 U.S.C. § 1504(c)). Similarly, proposed Section 148.105(a)(5) requires a

"statement on the history of... affiliates for the last 5 years," Section 148.105(a)(6) requires a declaration regarding certain lobbying activities of affiliates, Section 148.105(a)(4) requires a list of corporate officers and directors of affiliates that participated in the decision to apply for a license, and Section 148.105(a)(1) requires information as to the "principal business activity" of affiliates. None of these subjects is specifically referenced in the Deepwater Ports Act. (Id.)

G&P recognizes that DOT should and must assure itself that applicants for deepwater port facility licenses are fully qualified to hold such licenses. In addition, G&P understands that the submission of information regarding certain of an applicant's affiliates may be necessary in specific cases in order to permit DOT to evaluate an applicant's qualifications. It is, however, unnecessary and unwarranted for DOT to require each applicant in every case to submit information regarding every one of its affiliates. Such a requirement is not set forth in the Deepwater Ports Act, is not explained or justified in DOT's notice of proposed rulemaking, would impose an unnecessary and extraordinary burden upon applicants, and would result in the submission of large quantities of irrelevant information to DOT.

To better understand G&P's concerns in this regard, it should be recognized that G&P, as a member of a large, multi-national corporate family, has several hundreds or more affiliates located in numerous countries around the world. Compiling an accurate list of these entities at any given time would be a challenge, much less preparing five year histories and three years of audited financial statements for each of them. This is especially true because separate audited financial statements are not normally needed for each affiliate and are, therefore, not routinely prepared. Given that the vast majority

of G&P's affiliates would have no role whatsoever in any U.S. deepwater port project that G&P might propose, it would be pointless to impose such an extraordinary and costly filing burden upon G&P. The same holds true for other potential applicants who are members of large corporate families.

To resolve this issue, G&P suggests that the proposed rules be modified such that at the application stage, the submission of information will be required only with respect to the applicant itself, affiliates with an ownership interest in the applicant of greater than 3 percent, and affiliates which have a direct contractual relationship with the proposed deepwater port. If separate audited financial statements are not available for these affiliates in the normal course, the submission of audited consolidated statements for corporate groups in which the affiliates are included should be sufficient.

In most cases, these modified requirements will ensure that all relevant affiliates are covered and that all necessary information is submitted. Nevertheless, it should be noted that under Section 148.107(a) of the proposed rules, the Commandant has authority to require the applicant and its affiliates to submit additional information which he deems necessary. Thus, if information is needed regarding an affiliate which is not covered or supplied in the initial application, DOT can require its submission. In short, the modifications suggested above would eliminate unwarranted and unnecessary burdens upon applicants, while still ensuring that DOT will have all relevant information before it. These modifications, therefore, are fully consistent with the provisions of the Deepwater Ports Act itself, which clearly envision that, while DOT should be free to obtain all of the information it needs to carry out its responsibilities, it should not require

the submission of information not needed for that purpose. (See, 33 U.S.C. § 1504(c)(2) and (3)).

D. Certain of the Proposed Rules on Technical Issues Should be Modified or Further Explained.

1. Under Section 148.105(v) of the proposed rules, a draft operations manual for a proposed port must be submitted with the initial application for a deepwater port license. G&P understands the central importance of proper operations manuals, and recognizes the need for such manuals to be prepared and presented to DOT for review and approval well in advance of the start-up of port operations. G&P believes, however, that it would be premature and unnecessarily burdensome to require applicants to submit draft operations manuals at the application stage, given that much, if not all, of the information required to be included in the manual is likely to be refined and optimized during the approval process. Accordingly, G&P believes that the requirement to submit a draft manual as part of the license application should be deleted, and replaced with a requirement that a draft manual, containing all of the information required under Section 150.15 of the proposed rules, must be submitted at least one year prior to port start-up. This will ensure that the draft will be meaningfully complete when it is filed, and will avoid forcing the applicants and DOT to expend resources in developing and reviewing a highly preliminary document.

2. Section 150.10 of the proposed rules requires the operations manual for each deepwater port to be filed with and approved by the Commandant. While G&P certainly has no objection to the Commandant being the ultimate approval authority, it believes that the Captain of the Port ("COTP") should be directly involved in the development and review of port operations manuals. The COTP will be involved in inspections of

port facilities and will be ultimately responsible for the safety of port operations. It seems prudent, therefore, that the COTP should be involved in the manual approval process, and should have the opportunity to provide meaningful, field level input into the way each port will be operated. For these reasons, G&P suggests that Section 150.10 be modified to establish a two-tiered review process whereby proposed manuals would first be submitted to the COTP for review and preliminary approval, and then to the Commandant for final approval. This is similar to the process followed in the review by the MSC (the Marine Safety Center) and the OCMI (the Officer In Charge, Marine Inspection) of operation manuals for MODU (Mobile Offshore Drilling Units) facilities, and seems also to be well suited to deepwater ports.

3. With respect to the definitions in Section 148.5 of the proposed rules, G&P has two comments. First, G&P suggests that a definition for the term "oil residue" be added in order to avoid confusion as to the meaning of that term as used in proposed Section 149.150. Second, as DOT is aware, the pending amendments to the Deepwater Ports Act may modify the statutory definition of the term "deepwater port." If that happens, a conforming change will be necessary in the regulations.

4. Section 148.107(b) of the proposed rules mandates that an applicant for a deepwater port must identify the location of documents prepared by it or an affiliate within 4 years of the date of its application which were prepared by or for a board of directors or planning committee, which concern the financing or operation of a deepwater port, or which concern existing or proposed rates for such a port. At the outset, the meaning of the phrase "the locations where the applicant and its affiliates have filed documents" is not clear. It appears to refer to the geographic locations of

internal document storage facilities. It could, however, be seeking a listing of the places, if any, where any such documents have been formally and publicly "filed." If this section of the proposed rules is retained, that phrase should be clarified.

Beyond that technicality, G&P is unclear as to the purpose of this requirement. Many documents of the type listed in Section 148.107(b) could exist which have nothing whatsoever to do with the application ultimately filed by an applicant. They could relate, for instance, to different potential ports in entirely different locations, or to financing plans or rate concepts long ago discarded. Such information, the submission of which is not mentioned anywhere in the Deepwater Ports Act itself, would have no relevance to a new and different port proposal.

As indicated above, G&P understands and supports the need for DOT to obtain all information which is reasonably relevant to the evaluation of deepwater port proposals. Section 148.107(b) of the proposed rules goes beyond that legitimate need, however, because it is open-ended and is not in any way limited as to relevance. It would, in addition, be potentially quite burdensome to applicants. In these circumstances, G&P believes that Section 148.107(b) should simply be deleted. Section 148.107(a) is more than sufficient to enable the Commandant to obtain all of the additional information, beyond that included in the application itself, which DOT needs to evaluate a port proposal.

5. Section 149.690 of the proposed rules would require deepwater ports to comply with certain means of escape requirements being considered in the OCS activities rulemaking. G&P believes that the existing DOT regulations on this subject (ie. 33 C.F.R. 149.421, .423, .431, .433 and .441) should be retained until the new OCS

activities rules are finalized. At that time, the two sets of rules can be conformed to the extent practicable and desirable.

6. Section 149.305 of the proposed rules would establish new lifesaving equipment requirements for deepwater ports. Among other things, ports located in the Gulf of Mexico, more than three miles from a safe haven, and staffed with 9-30 persons would need at least one SOLAS approved Rescue Boat. SOLAS, however, technically applies only to vessels engaged in international voyages, and does not apply to fixed platforms. In these circumstances, G&P believes that an alternative type of rescue boat should be permitted for deepwater ports. As is the case for Offshore Supply Vessels (See, 46 C.F.R. 133.135), a rescue boat approved by the OCMI as meeting performance criteria for speed, adequate size and stability, and capability for retrieving unconscious bodies from the ocean, should be satisfactory.

7. The preamble to the proposed rules states that "the COTP, rather than the Commandant, should be given written confirmation of the licensee's receipt of ABS certificates on SPM's, so we have proposed this change" (67 Fed. Reg. at 37922). This change, however, with which G&P concurs, appears to have been inadvertently omitted from the rules themselves. If so, it should be specifically included.

8. Sections 149.615 and 149.620 of the proposed rules provide that all construction drawings and specifications for deepwater ports must be submitted to the Commandant for review and approval. G&P has no objection to the Commandant being the ultimate reviewing authority on design and construction issues. G&P believes, however, that design and construction plans for deepwater ports should be submitted initially for review and approval to the Marine Safety Center ("MSC"), just as is the case with any

other offshore floating facility. Unlike the Commandant, MSC has a staff well versed in design review and it is, therefore, well suited to perform the initial review of deepwater port plans efficiently and effectively. G&P would note in this regard that the design standards for deepwater ports set forth in the regulations are quite detailed and specific, so that the filed plans for such facilities will not be conceptual or novel. Finally, initial review by MSC would leave the Commandant free to resolve appeals on any disputed issues after all of the relevant facts have been fleshed out before MSC. For these reasons, G&P urges that Sections 149.615 and 149.620 be modified to assign the initial design and construction drawing review responsibility to MSC.

9. Section 149.625(c) of the proposed rules requires that each electrical installation on a deepwater port must be designed, to the extent practicable, according to 46 C.F.R. chapter I, subchapter J. G&P believes that this provision should be modified to permit API RP500 to be used as an alternate design standard for electrical equipment. The Coast Guard has permitted use of the API RP500 design standard for certain floating offshore facilities in the past, and it should be permitted as well for deepwater ports.

10. With respect to port inspections, the preamble to the proposed rules states that Section 150.755 of the existing rules, 33 C.F.R. § 150.755, entitled "Port Inspection Records," is being replaced "with a requirement for an annual self-inspection report..." (67 Fed. Reg. at 37927). G&P supports this change. G&P has been unable to locate the self-inspection requirement in the proposed rules, however, and believes that it may have been inadvertently omitted. G&P urges that the requirement for an annual self-inspection report be specifically set forth in the rules. As proposed in the preamble, the

required report should be similar to the Facility Inspection Report required for all fixed OCS facilities.

Further with respect to inspections, Section 150.100 of the proposed rules provides that "[u]nder the direction of the OCMI, marine inspectors may inspect deepwater ports to determine whether the requirements of this subchapter are met." The inspections can be made "with or without advance notice, at any time the OCMI deems necessary." This appears to be a new requirement which is not derived from any provision in the existing rules.

G&P has no objection to appropriate inspections by or under the direction of the OCMI to ensure compliance with the deepwater port regulations. As currently drafted, however, proposed Section 150.100 is extremely vague and open-ended. G&P believes that guidelines should be included as to the frequency and content of inspections to ensure consistency of inspections among deepwater ports and among individual inspectors. Without such guidelines, inspections could vary considerably between various ports, depending on the discretion of the commanders of the various marine zones.

G&P also believes that inspections by the Coast Guard should be coordinated with the self-inspection reports to be filed by the licensees. It would be appropriate, for instance, for the Coast Guard to inspect each port following the submission and review of the self-inspection report.

Finally, G&P believes that either in the inspection provisions or elsewhere in the regulations, DOT should clarify the reporting requirements which will apply to facility and equipment repairs, ie. when a repair is necessary should the licensee simply make it on

its own, should it first seek approval from DOT, should it notify DOT following completion of the repair, other?

IV. Conclusion

For the reasons set forth above, G&P urges DOT (1) to clarify that none of its existing or proposed rules will be applied to deepwater natural gas ports without additional notice and opportunity for comment, (2) to de-couple these proposed rules from the pending OCS activities rulemaking, (3) to modify these proposed rules, in the manner set forth above, to limit the information required to be submitted in deepwater port license applications regarding affiliates of the applicant that have no role or involvement in the deepwater project, and (4) to address the several technical issues set forth above.

Respectfully submitted,

SHELL U.S. GAS & POWER LLC

By A. Y. Noojin III
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President

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